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LAW, RELIGION AND PUBLIC DISCOURSE

**Course Materials
Fall 2004**

**Professor Jennifer Nedelsky
and
Professor Roger Hutchinson**

**Faculty of Law
University of Toronto**

***** These Materials are for the sole use of students of
the Faculty of Law, University of Toronto**

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UNIVERSITY OF TORONTO


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Law, Religion and Public Discourse

FALL 2004

Jennifer Nedelsky and Roger Hutchinson

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What is lost when secularism defines the norms of public discourse in ways that prohibit reference to religious beliefs as the source of claims or arguments? What would an optimal understanding of the secular be? These questions will be explored in relation to different types of discourse (legal, religious, political), different issues (social and economic justice, same sex marriage, abortion), and different faiths or traditions. (Aboriginal, Christian, Buddhist, Jewish, and non-affiliated—Fall 2004 most of the material will be drawn from interfaith groups and groups or individuals whose faith traditions are Christian or Jewish). We will be using a framework that Roger Hutchinson has developed for examining optimal ways for analyzing conflicting positions, and for thinking about the differences between political and religious positions and ways of moving back and forth between them.

While the course will address the issue of the separation of church and state, the primary focus will not be on constitutional guarantees of religious freedom. One of the central purposes of the course will be to envision ways in which religious and spiritual beliefs could become respectable dimensions of legal, political, and academic discourse while sustaining a deep respect for pluralism and attending to the dangers that underlie the commitment to the separation of church and state.

Evaluation: Graduate students and law students:

Class participation (including weekly written comments either on one of the readings or on another student's written comments. In addition, each week three students (to be assigned at the second class) will provide a short example of what they consider a good use of spiritually based public argument to be circulated to the class. (Students can e-mail the article, press release etc or send the web site, or bring short hard copies to class.) For weeks 7-13, students should try to find an example relevant to the topic for the week.

25%

A 25-page paper due last date for written work. **TWO COPIES PLEASE.** 75%

The paper will focus on 3 or 4 of the readings, connecting them to each other and to the main themes of the course. Students should show how together they contribute to these themes, or develop a particular problem related to these themes, and use the articles to work the problem through, or show how the insights of these articles help us better understand a particular concrete case or problem. If you are using an example not drawn from the course material, be sure you do not spend too much space presenting the example. A maximum of 2-3 pages. If you find you cannot present the example you have in mind within that space, you may use additional pages. But then you will need to add those additional pages to the total length of the paper, so that you still have at least 22 pages of analysis, integrating the example into your discussion of the texts and the key issues. A similar approach applies to using material outside the assigned reading. You are, of course, welcome to note other material that adds to your argument. But if you spending more than a few lines referring to that material, you should ensure that you still have the required page length devoted to the analysis of the texts and issues in the course.

BY DECEMBER 2, STUDENTS SHOULD SUBMIT A PARAGRAPH SUMMARY OF THEIR PAPER TOPIC AND THE TEXTS THEY WILL FOCUS ON, OR AN OUTLINE OF THE PAPER WHICH IDENTIFIES THE TEXTS. IF YOU INTEND TO USE MATERIALS OUTSIDE THE SYLLABUS (BEARING IN MIND THE REQUIREMENTS ABOVE), A BIBLIOGRAPHY SHOULD BE INCLUDED. TWO COPIES PLEASE.

Evaluation: Undergraduates:

Class participation (including weekly written comments either on one of the readings or on another student's written comments. In addition, each week three students (to be assigned at the second class) will provide a short example of what they consider a good use of spiritually based public argument to be circulated to the class. For weeks 7-13, students should try to find an example relevant to the topic for the week. (Students can e-mail the article, press release etc or send the web site, or bring short hard copies to class.)25%

Five page paper on 1 or 2 of the readings. Due Wednesday, October 27. To be turned into Lynne Ross, Flavelle 343. **TWO COPIES PLEASE.** 20%

A 15-20 page paper due noon Monday, December 13. To be turned into Lynne Ross, Flavelle 343. **TWO COPIES PLEASE.** 55%

The paper will focus on 3 of the readings, connecting them to each other and to the main themes of the course. Students should show how together they contribute to these themes, or develop a particular problem related to these themes, and use the articles to work the problem through, or show how the insights of these articles help us better understand a particular concrete case or problem. If you are using an example not drawn from the course material, be sure you do not spend too much space presenting the example. A maximum of 2-3 pages. If you find you cannot present the example you have in mind within that space, you may use additional pages. But then you will need to add those additional pages to the total length of the paper, so that you still have at least 22 pages of analysis, integrating the example into your discussion of the texts and the key issues. A similar approach applies to

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WEEK 1 (Sept. 9):

Introduction

WEEKS 2 – 6: THEORETICAL PERSPECTIVES

WEEK 2 (Sept. 16):

Roger Hutchinson, “Religion, Morality, and Law in Modern Society” (Basic typology regarding interactions among religion, morality and law.)

Roger Hutchinson, “Christian Social Action: The Coalition Model” (Deals with Protestant/Catholic/secular dynamics regarding population and development policies.)

“OPTIONAL” Roger Hutchinson, “Comparative Ethics and the Mackenzie Valley Pipeline Debate”.

We will be discussing the relationship between politics and religion (see especially pp. 16-17 of “Christian Social Action”). In this context Professor Hutchinson will be outlining his framework for analyzing ethical issues, which can facilitate the move back and forth between religious convictions and political action and argument. His “Comparative Ethics” article explains these steps; students can use it as a reference point for discussions throughout the course.

WEEK 3 (Sept 23):

John Rawls, “Idea of Public Reason Revisited”

WEEK 4 (Sept. 30):

Jeffrey Stout, “Secularization and Resentment” Ch. 4, *Democracy and Tradition*

WEEK 5 (Oct. 7):

Jennifer Nedelsky, “Human Rights and Communities of Judgment”

WEEK 6 (Oct. 14):

Madhavi Sunder, "Piercing the Veil"

**WEEKS 7 – 10: RELIGION, ECONOMICS, AND
SOCIAL TRANSFORMATION**

WEEK 7 (Oct. 21)

Walter Block, "On Economics and the Canadian Bishops" (Includes the highly publicized 1983 "Ethical Reflections on the Economy" by the Social Affairs Department of the Canadian Conference of Catholic Bishops)

WEEK 8 (Oct. 28)

Bill Blaikie, "The Social Gospel & Globalization"

Bill Blaikie, "A New Footing for Religious Voices in the Public Realm: More on Religious Talk in Public Places"

WEEK 9 (Nov. 4)

Roger Hutchinson, "Social Ethics in a Post-Liberal Age" (Deals with the churches and international debt.)

WEEK 10 (Nov. 11)

Lives in the Balance, by the Interfaith Social Assistance Reform Coalition (ISARC). Available through the Faculty of Law bookstore.

Two students to compare with "Walking on Eggshells" for their comment. The students do not need to be doing comments for this week. They can do them this week instead of their regular week. Both reports focus on similar issues, but one is from a secular and one from (multi) faith based perspectives. What difference do these different perspectives make?

The 129 page report is online:

http://www.yorku.ca/yorkweb/special/Welfare_Report_walking_on_eggshells_final_report.pdf

There will also be a hard copy on reserve.

WEEKS 11 – 13: Same-Sex Marriage and Abortion

WEEK 11 (Nov. 18)

Factum of Intervener re: The Interfaith Coalition on Marriage and Family, Court of Appeal for Ontario

Marriage Submission, Standing Committee on Justice, On Marriage and the Legal Recognition of Same-Sex Unions

Evangelical Fellowship of Canada, “Message of the Canadian Conference of Catholic Bishops: Marriage in the Present Day

The Reverend Scott Gale, “A Call for Intense Dialogue”

Interfaith Coalition for Same-Sex Marriage/United Church Coalition Submission to the House of Commons Standing Committee on Justice and Human Rights

United Church Submission to the House of Commons Standing Committee on Justice and Human Rights, February

United Church, “Council Tells Federal Government to Legalize Same-Sex Marriages”

WEEK 12 (Nov. 25)

Morgentaler v. The Queen, (Summary of case plus Justice Bertha Wilson’s reasons)

The Anglican Church of Canada, *Abortion: An Issue for Conscience*

WEEK 13 (Dec. 2)

The United Church of Canada, *Abortion: A Study*

Roman Catholic Bishops: “Canadian Catholic Conference Statement on proposed change of Canadian Law on Abortion,”

British Columbia Civil Liberties Association, “Submission to the Legislative Committee on Bill C-43, An Act Respecting Abortion.”

The Evangelical Fellowship of Canada, “Abortion in Canada: A Brief to the Legislative Committee on Bill C-43”

Hansard, An Exchange in the House of Commons Between an Alliance M.P. and a B.Q. M.P.

Jean Porter (Roman Catholic scholar), “Moral Reasoning, Authority, and Community in *Veritatis splendor*”

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WEEK 11

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